

Central Intelligence Agency



Washington, D.C. 20505

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28 March 1986
OCA 86-0979

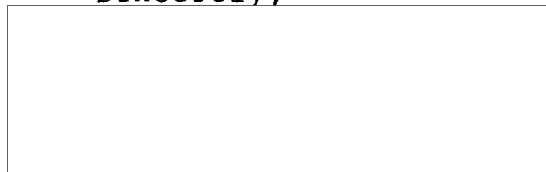
Mr. Michael Smith
Assistant General Counsel
National Security Agency
Fort Meade, Maryland 20755-6000

Dear Mr. Smith:

Enclosed is the revised House Permanent Select Committee on Intelligence (HPSCI) proposal to amend H.R. 3378. The HPSCI staff felt it was necessary to revise the language agreed upon earlier to meet concerns raised by Representative Kastenmeier, the author of H.R. 3378. The language has not yet been shown to Representative Kastenmeier.

I would appreciate your review and any comments you may have on the proposal no later than 2 April 1986.

Sincerely,




Office of Congressional Affairs

Enclosure

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Central Intelligence Agency



Washington, D.C. 20505

28 March 1986
OCA 86-0980

Mr. Rick Cinquegrana
Office of Intelligence Policy
and Review
Department of Justice
Washington, D.C. 20530

Dear Mr. Cinquegrana:

Enclosed is the revised House Permanent Select Committee on Intelligence (HPSCI) proposal to amend H.R. 3378. The HPSCI staff felt it was necessary to revise the language agreed upon earlier to meet concerns raised by Representative Kastenmeier, the author of H.R. 3378. The language has not yet been shown to Representative Kastenmeier.

I would appreciate your review and any comments you may have on the proposal no later than 2 April 1986.

Sincerely,

[Redacted Signature]

Office of Congressional Affairs

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OCA/LEG: [Redacted] pap (28 March 1986)

HPSCI DRAFT March 25, 1986

PROPOSED AMENDMENTS TO H.R. 3378

Amendment One

On page 5, after line 18 add the following paragraph:

(7) Section 2511(2)(f) of title 18, United States Code, is amended by striking "by" the second time it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communication system, utilizing".

Amendment Two

On page 13, after line 14, add the following new section:

Section 108. INTELLIGENCE ACTIVITIES.

Nothing in this title or the amendments made by this title shall be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

HPSCI DRAFT March 25, 1986

COMPARISON OF 18 U.S.C. 2511 (2) (f) BEFORE AND AFTER PROPOSED AMENDMENT

Current §2511 (2) (f)

Nothing contained in this chapter, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

Proposed §2511 (2) (f)

[Material added by proposed amendment is underscored; material stricken is lined out.]

Nothing contained in this chapter or section 705 of the Communications Act of 1934, shall be deemed to affect acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communication system, ~~by~~ utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

HPSCI DRAFT March 25, 1986

Proposed Report Language

Section 101(c)(7) of H.R. 3378 amends Section 2511(2)(f) of Title 18 of the United States Code to ensure that nothing in chapter 119 of Title 18 or Section 705 of the Communications Act of 1934, as amended by H.R. 3378, affects existing legal authority for United States Government foreign intelligence activities involving foreign electronic communications systems. The provision neither enhances nor diminishes existing authority for such activities; it simply preserves the status quo. It does not provide authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution and laws of the United States.

The Committee notes that the legal status quo includes all existing executive branch procedures and regulations relating to the conduct of intelligence activities, including those involving electronic surveillance, physical searches, and the minimization of information collected concerning U.S. persons. The Committee expects that any proposed changes in these procedures and regulations will be brought to the attention of the appropriate congressional committees prior to taking effect.

Finally, the Committee expects that the Permanent Select Committee on Intelligence will be kept fully and currently informed of all intelligence activities involving foreign electronic communications systems, especially those in which U.S. persons may be incidentally involved.

* * *

Section 108 of H.R. 3378 emphasizes that nothing in Title I of the bill, or the amendments made by Title I, such as the changes made to 18 U.S.C. 2511(2)(f), provides authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution and laws of the United States.